

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

THE UNITED STATES OF AMERICA,)	DOCKET NO. 04 CR 63
)	
Plaintiff,)	
)	
vs.)	
)	
HATEM FARIZ,)	Chicago, Illinois
)	September 28, 1964
Defendant.)	1:15 o'clock p.m.

**EXCERPT OF
TRANSCRIPT OF PROCEEDINGS BEFORE THE HONORABLE
MILTON I. SHADUR, Judge**

APPEARANCES:

For the Plaintiff:

MR. JAMES E. BARZ

For the Defendant:

MR. LUIS GALVAN

**JESSE ANDREWS
Official Court Reporter - U. S. District Court
219 S. Dearborn Street
Chicago, Illinois 60604
(312) 435-6899**

* * * * *

1 THE CLERK: 04 CR 63, The United States of America
2 vs. Hatem Fariz.

3 MR. BARZ: Good afternoon, your Honor. Jim Barz on
4 behalf of the United States.

5 MR. GALVAN: Good afternoon, Judge. Luis Galvan,
6 Federal Defender Program.

7 THE COURT: Good afternoon.

8 MR. GALVAN: Mr. Fariz is before the Court, Judge.

9 THE COURT: Yes.

10 Well, as you know the original arraignment I think
11 was before Magistrate Judge Mason, so that's behind us. And
12 then I had set a schedule for motions, and we didn't hold our
13 originally-set scheduled status because Mr. Fariz was not up
14 here. What is our situation now?

15 THE CLERK: This is the arraignment ont he
16 superseding, Jude.

17 THE COURT: Oh, is this on the superseding?

18 THE CLERK: Yes.

19 MR. BARZ: Yes. Right.

20 THE COURT: Wait just a minute. Let me get that.

21 (Pause)

22 That's on the superseding indictment that I have
23 received. Okay. I had compared those -- thank you, Sandy.

24 MR. BARZ: Your Honor, the superseding indictment
25 is --

1 THE COURT: Wait just a minute.

2 I did compare them. My recollection is that the
3 original count and the original Count 2 had been retained and
4 Count 3, and Count 4 and Count 5 -- I just want to make sure
5 here -- and 6, 7, 8, 9. Is there anything other sentencing
6 allegations that's been added?

7 MR. BARZ: No, your Honor.

8 THE COURT: Well, because matters that impact
9 pursuant to Blakely have to be resolved by a jury, even though
10 we are not dealing with any added count, we are dealing with
11 some further allegations. So I suppose that in the technical
12 sense it's appropriate to ask whether you are prepared to
13 acknowledge receipt of the added sentencing allegations and
14 waive their formal reading?

15 MR. GALVAN: We are, Judge.

16 THE COURT: I am not sure that asking whether your
17 client pleads guilty or not guilty to sentencing allegations is
18 the right locution. I guess what is probably more accurate is
19 to ask whether he's prepared to acknowledge or not to
20 acknowledge the correctness of the sentencing allegation,
21 unless the prosecutor thinks that something else is called for.
22 They are really technical, of course, not added charges as
23 such. Do you think that anything different is called for?

24 MR. BARZ: Well, I think that the general purpose is
25 inform him of the allegations.

1 THE COURT: Well, I know that.

2 MR. BARZ: Yes. I agree with your Honor.

3 THE COURT: Okay. So the question is whether having
4 discussed these with your client, Mr. Fariz, is prepared to
5 acknowledge the accuracy or to deny the accuracy of the
6 sentencing allegations?

7 MR. GALVAN: At this time we will deny the accuracy,
8 Judge.

9 THE COURT: Okay.

10 The record will reflect then acknowledgement of
11 receipt of a copy of the sentencing allegations, the waiver of
12 formal reading and the denial of their accuracy.

13 Now let me relatedly ask then, Mr. Galvan, whether
14 it's is your view that any motion should b directed to the
15 sentencing allegations? As you we had set a schedule on
16 motions originally, none had been tendered. But that the
17 addition may occasion a different decision in terms of the
18 original motions or motions on the sentencing allegations or
19 both. What's your pleasure?

20 MR. GALVAN: I don't believe that there is any need
21 for any, Judge.

22 THE COURT: Okay.

23 Should I now set a trial date or should I -- because
24 I think that at this point except for the obvious issue of
25 complexity that the Supreme Court may or may not resolve for us

1 in a short time frame, there is no further basis for the
2 exclusion of time. What's our posture in that regard.

3 MR. GALVAN: Your Honor, we had filed a motion for
4 continuance based on the case in Florida.

5 THE COURT: And the government has opposed that.

6 MR. BARZ: Yes, your Honor. We filed a written
7 response.

8 THE COURT: Ye s. I looked at that. I found the
9 government's position troublesome because as I understand the
10 government's response, what it is targeted at is effectively
11 trying to affect a decision by Mr. Fariz as to whether he is
12 going to testify or not. And as I say, that's troublesome.
13 If -- well, let me put it differently.

14 What the government is saying that because of the
15 fact that the charges here would pending rather than the
16 possibility of his acknowledging them, that he would be free to
17 testify falsely. Now to my knowledge nobody is free to
18 falsely. You know, one of the added lessons, as you know.
19 Blakely provided, at least the majority has provided, is that
20 there is a price that people pay for false testimony. So the
21 what I gather is the thrust of the government's argument --
22 that is, that even though there may be an intention to plead
23 guilty to these presents charges, that defense counsel doesn't
24 want to have a conviction on his record that would somehow put
25 a thumb on the scales in connection with the Florida case. Why

6
1 should that be a considered that would motivate the Court?

2 MR. BARZ: Well, your Honor, with the defendant's
3 motion, in his motion he didn't even make that argument. That
4 was brought up at the status. In his motion he argued that the
5 Florida case was so complex that under Section 3161 a
6 continuance in this case was warranted. We responded to that
7 argument by saying that might justify a continuance of Florida
8 case, but this case is no so complex as to warrant an exclusion
9 of time under that provision.

10 He did make a comment, there was discussion at the
11 status, if your Honor recalls, about the effect that if he did
12 plead guilty in this case that conviction maybe used to
13 cross-examine him should he testify in the Florida case.

14 THE COURT: Well, it's more than the idea of using it
15 to cross-examine. It is because, as all of us know,
16 convictions are the predicate for potential impeachment. And
17 that's so irrespective of whether the nature of the offense is
18 such as to implicate credibility or not. You know for that
19 purpose, for better or worse the Federal Rules Evidence say a
20 conviction, is a conviction is a conviction -- a Gertrude Stein
21 kind of approach. And the concern that I have is, I had
22 thought of this is sort of an interest of justice kind of
23 approach. And that is, that if Mr. Fariz were to choose to
24 testify in the Florida case -- of course, I don't know that, I
25 can't control that, it's up to him -- whether as I say there

7
1 should an added thumb put on the scales to affect that decision
2 by reason of the fact he would then have a conviction here.
3 Now that's strikes me as a kind of potential interest of
4 justice concern under 3161(h) (8). And that's really the thing
5 that struck me and that I would like to get the government's
6 view on.

7 MR. BARZ: Your Honor, first of all, I think that
8 whether he would be cross-examined is a decision for the trial
9 court in Florida to make. Under Federal Rules of Civil
10 Procedure 609 it is not a matter of fact that he would
11 cross-examined. Any other witness gets cross-examined on
12 convictions within ten years. As to the accused, it is only if
13 the Judge in that case finds that the probative value of the
14 conviction acquisition is not outweighed by its prejudicial al
15 value. I don't know that we ought to be, if you will, tipping
16 our thumbs on the scale of that decision. That's more
17 appropriately to made by the Florida Court.

18 And I looked at this, because I tried to think
19 through exactly what -- you know, unfortunately I was hoping
20 that argument would be fleshed out in the defendant's motion, I
21 didn't see it there. So I tried think through it.

22 THE COURT: Yes.

23 MR. BARZ: Exactly. You know, what is the difference
24 of going forward here or not going forward. And as I looked at
25 it, if we go forward here and there is a conviction and under

1 the Sixth Amendment the decision, the Florida judge is under
2 609, does the probative value outweigh the prejudicial --

3 THE COURT: Right. Right.

4 MR. BARZ: If we don't go forward here, the
5 government may or may not still seek to -- may seek to
6 cross-examine him under 608. And the Florida judge may allow
7 the government to cross-examine him on the conduct.

8 THE COURT: Right.

9 MR. BARZ: So even he doesn't go forward here, he may
10 still be subject to cross-examination on that point within the
11 discretion --

12 THE COURT: On the conduct, rather than the fact of
13 conviction?

14 MR. BARZ: Yes.

15 THE COURT: Right.

16 MR. BARZ: And to me, as I saw, one of substantive
17 differences when I looked at 609 and 608 was, under 609 if he
18 asked about his conduct, that we are presuming for this that he
19 has indicated that he is willing to plead too, he deny that
20 conduct there. And the government would be able to introduce a
21 st certified copy of conviction to let the jury know when they
22 assessing his credibility that he was convicted of it. Under
23 608 the government could not prove up by extrinsic evidence
24 they and the jury will be stuck with you will his request of
25 false denial.

1 THE COURT: Well, that of course is the reason that I
2 began with the point that I made -- that is, when somebody
3 chooses s to testify, and if he testifies falsely in that
4 proceeding, even though as you say the government is stuck with
5 the answer, and this case is still pending, he stands at a
6 major risk in that regard, because his false testimony may
7 still be advanced. That's reason that I started out by talking
8 Blakely terms. Okay? Because one of the points as you know
9 that Justice Scalia made in Blakely was, "You know, if a
10 potential enhancement is due to -- in that context obstruction.
11 "Obstruction how? In the form of false testimony." He said,
12 "Well, you know, people can always be indicted for perjury.

13 MR. BARZ: No. I think one of the realities of this
14 case is if the defendant as he indicated, these charges in
15 Florida are so vastly more serious than a perjury charge would
16 be --

17 THE COURT: Yes.

18 MR. BARZ: -- it may be, if you will, and entertain
19 this thought for a moment, just for the line of the argument, I
20 am not trying to imply or infer anything --

21 THE COURT: Okay.

22 MR. BARZ: -- but one might reasonably conclude it to
23 worth it to perjure myself in a terrorism related's case, and
24 perhaps advance my cause of defeating that case and be subject
25 to the risk later that I get a perjury conviction. That might

1 be an analysis one could undertake, and say, on the cost
2 benefit to that approach is much greater. All of that said
3 comes back to my central point is, it seems to me that the
4 decision of delaying this case or continuing this case is sort
5 of up here in Illinois, we are sort are, if you will, giving
6 our two cents to the Florida trial judge as to what he might do
7 in this case there. And I really think that's appropriate for
8 him.

9 If he thinks that because of the timing of these
10 cases being -- running at the same time or for any other
11 reasons that it's unfair or improper to cross-examine the
12 defendant based upon his conviction in this case, then that
13 will be up to up the good arguments of his defense counsel down
14 there and the government down there, and he will take all of
15 things into consideration, and he is the appropriate person to
16 decide when he or she will make that decision.

17 THE COURT: Well, I will tell you. My purpose of
18 course is not is preempt the determinations made by a colleague
19 either here or elsewhere. It seems to me that perhaps the
20 appropriate thing to do is to permit the issues to be posed in
21 the form of a motion before the Judge in Florida. Defer
22 determination here, because as far as I am concerned, if the
23 Florida judge is concerned about the kinds of considerations
24 that you have identified, and says, "No, I don't want that."
25 You know, if this fellow is prepared is to plead up here, let

1 him plead first, and let's have it in that posture in which we
2 have got a 609 issue rather than 608. And I will be perfectly
3 prepared to honor that and pursue that course.

4 But it seems to me that you are quite right in saying
5 that what we should not do is essentially tie the hands of the
6 judge who is going to be considering a more serious charge.
7 And I think the way to that is probably to defer the
8 determination here. Let the Judge there make the call. And as
9 I say, I don't -- I certainly wouldn't have a problem if the
10 judge says -- because my only concern, you see, is one of not
11 creating a potential penalty by reason of the conviction on the
12 ground that as I you all convictions are treated as fungible
13 under the Federal Rules Evidence in that respect.

14 You are right that it's not a 403 balancing under
15 609, but it is still a comparable type of balancing. Indeed,
16 when he was Chair for the Advisory Committee on the Rules of
17 Evidence, one of things that we were looking at was whether
18 that was an appropriate distinction -- well, we were looking
19 at a 608 amendment, and we were considering it of course in
20 conjunction with 609, and that's precisely one of the things
21 that we were thinking about.

22 So I am, you know, I recognize that very well and
23 maybe that the short answer. That is, let the judge who is
24 going to be looking at the more serious charges have the matter
25 presented to him or her -- I don't know who the judge is --

1 presented to him or her in the context of saying that the judge
2 here with the other charge is perfect prepared to be bound
3 essentially in terms how it goes forward in terms of that
4 judge's call. I think that's seems to me, you know, given the
5 mix, that's seems to me to be quite reasonable and maybe the
6 most appropriate way to deal with it.

7 MR. GALVAN: And Judge, just so the whole picture is
8 complete here, my concern is with the effect is the fact that I
9 don't want to negatively effect any decision that are going to
10 by the defense counsel that would affect Sixth Amendment rights
11 dun there.

12 THE COURT: Well, that's of course the place that I
13 began. And you are quite right. And as I say, I didn't want
14 to put future my thumb on the scales either. But this way it
15 seems to me that leaving to the judge who is going to do make
16 the call is a way that does not -- that can't create prejudice
17 either to the defense or to prosecution of that case.

18 MR. BARZ: Everything you are saying sounds perfectly
19 reasonable. My only concern is the time it involves. Here we
20 are at the end of September --

21 THE COURT: Yes. Where are they in the motion
22 practice, if you know, down there?

23 MR. BARZ: They are set for trial in January of 2005.
24 Now The government in that case dis supersede. They are up,
25 it's my understanding on Thursday. I don't know if that

1 schedule is going to be effected or not.

2 One concern I have how quickly we can get this. If
3 it takes a month, you know, to decide this issue then, We are
4 probably not going to be able to have a December trial here and
5 a January trial there. It might become --

6 THE COURT: All that has to be done here is maybe to
7 have poor Jesse write up the transcript and transmit the thing
8 to the prosecutor and defense counsel down there and let him
9 move on it. And if they move quickly and that trial is already
10 scheduled, it seems to that they ought to be capable of getting
11 a pretty prompt answer.

12 MR. GALVAN: And Judge, I am advised that at least
13 for now the defense counsel does not intend to ask for more
14 time. There are new allegations in the superseding indictment,
15 but they are nothing that they didn't anticipate.

16 THE COURT: Okay. All right.

17 Then I think that's the way to go on this one. What
18 I am going to do is I am --

19 MR. BARE: Can I ask for a short date so can keep
20 ourselves abreast of what they are doing?

21 THE COURT: Sure. I am entering and continuing the
22 motion. I have indicated my view as to the appropriate course
23 of action in connection with it. I am doing that orally. And
24 I am going to set -- next week I am going to be sitting with
25 the Ninth Circuit, so I am out of picket. But I could do it in

1 the, if we pick the right time, in the week that begins with
2 observed Columbus Day. It's sort of jammed up, but I have -- I
3 don't have a trial scheduled that week, so it is much more
4 flexible. And so any day is particularly preferable for either
5 of you, we will see what's the best time during that day.
6 That's from Tuesday, October 12 through Friday, October 15th.

7 MR. GALVAN: Any day is fine, Judge.

8 MR. BARZ: Any day is fine as well, except for
9 Tuesday afternoon. I have a conflict.

10 THE COURT: Okay. How about -- Tuesday is going to
11 be a diaster, because I think I am going to have a lot of
12 accumulated paper. But how about either Wednesday in mid to
13 late morning, or Thursday, the 14th. And I have a plea
14 scheduled at 1:15, but I could do it for example at 2 o'clock
15 or I could do it mid to late morning on the 14th. So you tell
16 me.

17 MR. GALVAN: Either day is fine.

18 Either day, your Honor.

19 THE COURT: Let's make it, if we may, 2 o'clock on
20 the 14th, that's Thursday. Okay.

21 Thank you.

22 MR. BARZ: Will time then be excluded then through
23 the 14th?

24 THE COURT: Yes I am -- wait just a minute. I am
25 excluding -- actually because the motions have been pending and

1 my last exclusion was through the 24th -- I am going to make
2 the exclusion of time from September 25th through October 14th,
3 which is 20 days inclusive, and that's excludable -- well,
4 there are really at least two grounds for exclusion. One would
5 be just interest of justice under 3161(h)(8)(a), AND also
6 complexity which I think certainly applies here, which would be
7 8(a) and (b)(4). Okay?

8 MR. BARZ: Okay.

9 THE COURT: Thank you?

10 MR. GALVAN: Thank you, Judge.

11 MR. BARZ: Thank you, Judge.

12 (WHICH WERE ALL OF THE PROCEEDINGS HAD AT THE HEARING OF
13 THE ABOVE-ENTITLED CAUSE ON THE DAY AND DATE AFORESAID.)

14 C E R T I F I C A T E

15 I HEREBY CERTIFY that the foregoing is a true and correct
16 transcript from the report of proceedings in the above-entitled
17 cause.

18 JESSE ANDREWS, CSR
19 OFFICIAL COURT REPORTER
20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF ILLINOIS
22 EASTERN DIVISION
23 DATED: October 4, 2004
24
25

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Man says he'll plead guilty to food-stamp fraud

September 29, 2004

BY **NATASHA KORECKI** Staff Reporter

Advertisement

A former Chicago convenience store owner said Tuesday he'll plead guilty to skimming \$1.6 million in food stamp benefits, but he wants to do it after a Florida terror-funding case against him is resolved.

Hatem Fariz, 31, formerly of Bridgeview, and seven others are awaiting trial in Florida on federal racketeering and conspiracy charges. Fariz, who lives in Spring Hill, Fla., is free on \$1.1 million bond.

He is charged along with former University of South Florida professor Sami Al-Arian with being members of a cell of the Palestinian Islamic Jihad.

Fariz fears a federal conviction on wire fraud charges in Chicago will be held against him in the terrorist funding case, which is scheduled to go to trial in Florida in early January.

U.S. District Court Judge Milton J. Shadur said he didn't want to "tie the hands" of a Florida judge presiding over the terror funding case by deciding when Fariz should answer charges in Chicago.

Saying he didn't want to affect the Florida case one way or another, Shadur told prosecutors to ask the Florida judge to decide which case should be resolved first.

Assistant U.S. Attorney Jim Barz objected to waiting for Fariz's plea. Barz argued that even without a conviction, Fariz's Chicago charges could come up at the Florida trial. Barz also suggested that Fariz might decide it a strategic move to perjure himself in the Florida case and deny responsibility in the Chicago case.

Fariz's attorney argued that a conviction in Chicago before his other trial would color his character in the Florida case, where he could face life in prison, if convicted.



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This summer, federal prosecutors said Fariz redeemed \$1.6 million in food stamp benefits between May 1999 and December 2000 even though his store, T & T foods, 2738 W. North Ave., estimated its annual food sales at \$150,000.



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